

CORRECTIONS CODE OF 1953 (EXCERPT)
Act 232 of 1953

CHAPTER III

BUREAU OF PARDONS AND PAROLES; PAROLE BOARD.

791.231 Bureau of field services; establishment; direction and supervision by deputy director; appointment; duties; assistants.

Sec. 31. There is established within the department a bureau of field services, under the direction and supervision of a deputy director in charge of field services, who shall be appointed by the director and who shall be within the state civil service. The deputy director shall direct and supervise the work of the bureau of field services and shall formulate methods of investigation and supervision and develop various processes in the technique of supervision by the parole staff. The deputy director is responsible for all investigations of persons eligible for release from state penal institutions, and for the general supervision of persons released from penal institutions. The deputy director in charge of the bureau of field services is responsible for the collection and preservation of records and statistics with respect to paroled prisoners as may be required by the director and the chairperson of the parole board. The deputy director shall employ parole officers and assistants as may be necessary, subject to the approval of the director. The deputy director shall select secretarial and other assistants as may be necessary and may obtain permanent quarters for the staff as may be necessary.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Bureau of Field Services and the deputy director in charge of field services to the Director of the Michigan Department of Corrections, see E.R.O. No. 1992-3, compiled at MCL 791.303 of the Michigan Compiled Laws.

Popular name: Department of Corrections Act

791.231a Parole board; establishment; appointment, terms, and removal of members; vacancy; salary and expenses; designation and responsibility of chairperson; powers and duties.

Sec. 31a. (1) Beginning October 1, 1992, there is established in the department, a parole board consisting of 10 members who shall be appointed by the director and who shall not be within the state civil service.

(2) Members of the parole board shall be appointed to terms of 4 years each, except that of the members first appointed, 4 shall serve for terms of 4 years each, 3 shall serve for terms of 3 years each, and 3 shall serve for terms of 2 year each. A member may be reappointed. The director may remove a member of the parole board for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office. If a vacancy occurs on the parole board, the director shall make an appointment for the unexpired term in the same manner as an original appointment. At least 4 members of the parole board shall be persons who, at the time of their appointment, have never been employed by or appointed to a position in the department of corrections.

(3) Each member of the parole board shall receive an annual salary as established by the legislature and shall be entitled to necessary traveling expenses incurred in the performance of official duties subject to the standardized travel regulations of the state.

(4) The chairperson of the parole board shall be designated by the director. The chairperson of the parole board is responsible for the administration and operation of the parole board. The chairperson may conduct interviews and participate in the parole decision making process. The chairperson shall select secretaries and other assistants as the chairperson considers to be necessary.

(5) The parole board created in this section shall exist for purposes of appointment and training on October 1, 1992, and as of November 15, 1992, shall exercise and perform the powers and duties prescribed and conferred by this act.

History: Add. 1992, Act 181, Imd. Eff. Sept. 22, 1992.

Popular name: Department of Corrections Act

791.232 Repealed. 1992, Act 181, Eff. Nov. 15, 1992.

Compiler's note: The repealed section pertained to establishment of parole board, appointment and qualifications of members and chairperson, and powers and duties of chairperson.

Popular name: Department of Corrections Act

791.233 Grant of parole; conditions; paroles-in-custody; rules.

Sec. 33. (1) The grant of a parole is subject to all of the following:

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(a) A prisoner shall not be given liberty on parole until the board has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety.

(b) Except as provided in section 34a, a parole shall not be granted to a prisoner other than a prisoner subject to disciplinary time until the prisoner has served the minimum term imposed by the court less allowances for good time or special good time to which the prisoner may be entitled by statute, except that a prisoner other than a prisoner subject to disciplinary time is eligible for parole before the expiration of his or her minimum term of imprisonment whenever the sentencing judge, or the judge's successor in office, gives written approval of the parole of the prisoner before the expiration of the minimum term of imprisonment.

(c) Except as provided in section 34a, and notwithstanding the provisions of subdivision (b), a parole shall not be granted to a prisoner other than a prisoner subject to disciplinary time sentenced for the commission of a crime described in section 33b(a) to (cc) until the prisoner has served the minimum term imposed by the court less an allowance for disciplinary credits as provided in section 33(5) of 1893 PA 118, MCL 800.33. A prisoner described in this subdivision is not eligible for special parole.

(d) Except as provided in section 34a, a parole shall not be granted to a prisoner subject to disciplinary time until the prisoner has served the minimum term imposed by the court.

(e) A prisoner shall not be released on parole until the parole board has satisfactory evidence that arrangements have been made for such honorable and useful employment as the prisoner is capable of performing, for the prisoner's education, or for the prisoner's care if the prisoner is mentally or physically ill or incapacitated.

(f) A prisoner whose minimum term of imprisonment is 2 years or more shall not be released on parole unless he or she has either earned a high school diploma or earned its equivalent in the form of a general education development (GED) certificate. The director of the department may waive the restriction imposed by this subdivision as to any prisoner who is over the age of 65 or who was gainfully employed immediately before committing the crime for which he or she was incarcerated. The department of corrections may also waive the restriction imposed by this subdivision as to any prisoner who has a learning disability, who does not have the necessary proficiency in English, or who for some other reason that is not the fault of the prisoner is unable to successfully complete the requirements for a high school diploma or a general education development certificate. If the prisoner does not have the necessary proficiency in English, the department of corrections shall provide English language training for that prisoner necessary for the prisoner to begin working toward the completion of the requirements for a general education development certificate. This subdivision applies to prisoners sentenced for crimes committed after December 15, 1998. In providing an educational program leading to a high school degree or general education development certificate, the department shall give priority to prisoners sentenced for crimes committed on or before December 15, 1998.

(2) Paroles-in-custody to answer warrants filed by local or out-of-state agencies, or immigration officials, are permissible if an accredited agent of the agency filing the warrant calls for the prisoner to be paroled in custody.

(3) Pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the parole board may promulgate rules not inconsistent with this act with respect to conditions to be imposed upon prisoners paroled under this act.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1978, Act 81, Eff. Sept. 1, 1978;—Am. 1978, Initiated Law, Eff. Dec. 12, 1978;—Am. 1982, Act 458, Imd. Eff. Dec. 30, 1982;—Am. 1994, Act 217, Eff. Dec. 15, 1998;—Am. 1998, Act 320, Eff. Dec. 15, 1998.

Popular name: Department of Corrections Act

791.233a Repealed. 1982, Act 314, Imd. Eff. Oct. 15, 1982.

Compiler's note: The repealed section pertained to determining prisoner's fitness to be released on parole.

Popular name: Department of Corrections Act

791.233b Eligibility for parole; minimum term.

Sec. 33b. A person convicted and sentenced for the commission of any of the following crimes other than a prisoner subject to disciplinary time is not eligible for parole until the person has served the minimum term imposed by the court less an allowance for disciplinary credits as provided in section 33(5) of Act No. 118 of the Public Acts of 1893, being section 800.33 of the Michigan Compiled Laws, and is not eligible for special parole:

(a) Section 13 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, as amended, being section 750.13 of the Michigan Compiled Laws.

(b) Section 14 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.14 of the Michigan Compiled Laws.

(c) Section 72, 73, or 75 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.72, 750.73, or 750.75 of the Michigan Compiled Laws.

(d) Section 80, 82, 83, 84, 86, 87, 88, 89, or 90 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.80, 750.82, 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, or 750.90 of the Michigan Compiled Laws, or under former section 85 of Act No. 328 of the Public Acts of 1931.

(e) Section 91 or 92 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.91 or 750.92 of the Michigan Compiled Laws.

(f) Section 110, 112, or 116 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.110, 750.112, or 750.116 of the Michigan Compiled Laws.

(g) Section 135, 136b(2), or 136b(3) of Act No. 328 of the Public Acts of 1931, as amended, being section 750.135 or 750.136b of the Michigan Compiled Laws, or under former section 136a of Act No. 328 of the Public Acts of 1931.

(h) Section 158 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.158 of the Michigan Compiled Laws.

(i) Section 160 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.160 of the Michigan Compiled Laws.

(j) Section 171 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.171 of the Michigan Compiled Laws.

(k) Section 196 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.196 of the Michigan Compiled Laws, or under former section 194 of Act No. 328 of the Public Acts of 1931.

(l) Section 204, 205, 206, 207, 208, 209, or 213 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.204, 750.205, 750.206, 750.207, 750.208, 750.209, or 750.213 of the Michigan Compiled Laws.

(m) Section 224, 226, or 227 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.224, 750.226, or 750.227 of the Michigan Compiled Laws.

(n) Section 316, 317, 319, 321, 322, 323, 327, 328, or 329 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.316, 750.317, 750.319, 750.321, 750.322, 750.323, 750.327, 750.328, or 750.329 of the Michigan Compiled Laws.

(o) Former section 333 of Act No. 328 of the Public Acts of 1931.

(p) Section 338, 338a, or 338b of Act No. 328 of the Public Acts of 1931, as amended, being section 750.338, 750.338a, or 750.338b of the Michigan Compiled Laws, or under former section 341 of Act No. 328 of the Public Acts of 1931.

(q) Section 349, 349a, or 350 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.349, 750.349a, or 750.350 of the Michigan Compiled Laws.

(r) Section 357 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.357 of the Michigan Compiled Laws.

(s) Section 386 or 392 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.386 or 750.392 of the Michigan Compiled Laws.

(t) Section 397 or 397a of Act No. 328 of the Public Acts of 1931, as amended, being section 750.397 or 750.397a of the Michigan Compiled Laws.

(u) Section 436 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.436 of the Michigan Compiled Laws.

(v) Section 511 or 517 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.511 or 750.517 of the Michigan Compiled Laws.

(w) Section 520b, 520c, 520d, or 520g of Act No. 328 of the Public Acts of 1931, as amended, being section 750.520b, 750.520c, 750.520d, or 750.520g of the Michigan Compiled Laws.

(x) Section 529, 529a, 530, or 531 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.529, 750.529a, 750.530, or 750.531 of the Michigan Compiled Laws.

(y) Section 544 of Act No. 328 of the Public Acts of 1931, as amended, being section 750.544 of the Michigan Compiled Laws, or under former section 545a of Act No. 328 of the Public Acts of 1931.

(z) Former section 2 of Act No. 38 of the Public Acts of the Extra Session of 1950.

(aa) Former section 6 of Act No. 117 of the Public Acts of 1952.

(bb) Section 1, 2, or 3 of Act No. 302 of the Public Acts of 1968, as amended, being section 752.541, 752.542, or 752.543 of the Michigan Compiled Laws.

(cc) Section 7401(2)(a), 7401(2)(b), 7402(2)(a), or 7402(2)(b) of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7401 or 333.7402 of the Michigan Compiled Laws.

History: Add. 1978, Initiated Law, Eff. Dec. 12, 1978;—Am. 1982, Act 458, Imd. Eff. Dec. 30, 1982;—Am. 1989, Act 252, Eff.

Mar. 29, 1990;—Am. 1994, Act 199, Eff. Oct. 1, 1994;—Am. 1994, Act 217, Eff. Dec. 15, 1998.

Constitutionality: A mandatory sentence of life without parole does not violate the prohibition against cruel and unusual punishments of the Eighth Amendment to the United States Constitution, because the Eighth Amendment contains no proportionality guarantee. Neither does the Eighth Amendment prohibit the imposition of mandatory sentences -- “severe, mandatory penalties may be cruel, but they are not unusual in the constitutional sense ... ” -- nor does it require consideration of individualized, mitigating circumstances beyond those cases in which a capital sentence is imposed. Harmelin v Michigan, 501 US 957; 111 S Ct 2680; 115 L Ed2d 836 (1991).

Compiler's note: Section 2 of 1994 PA 217, which provides that “This amendatory act shall take effect on the date that sentencing guidelines are enacted into law after the sentencing commission submits its report to the secretary of the senate and the clerk of the house of representatives pursuant to sections 31 to 34 of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, as added by the amendatory act resulting from House Bill No. 4782 of the 87th Legislature.” was repealed by 1998 PA 316, effective Dec. 15, 1998.

Popular name: Department of Corrections Act

791.233b[1] “Major controlled substance offense” defined.

Sec. 33b. As used in section 34, “major controlled substance offense” means any of the following:

- (a) A violation of section 7401(2)(a)(i) or (ii) of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7401 of the Michigan Compiled Laws.
- (b) A violation of section 7403(2)(a)(i) or (ii) of Act No. 368 of the Public Acts of 1978, being section 333.7403 of the Michigan Compiled Laws.
- (c) Conspiracy to commit an offense listed in subdivision (a) or (b).

History: Add. 1978, Act 81, Eff. Sept. 1, 1978;—Am. 1988, Act 143, Imd. Eff. June 3, 1988.

Compiler's note: Section 33b, as added by Act 81 of 1978, was compiled as MCL 791.233b[1] to distinguish it from another section 33b added by the initiated law submitted to and approved by the people at the general election held on November 7, 1978.

Popular name: Department of Corrections Act

791.233c “Prisoner subject to disciplinary time” defined.

Sec. 33c. As used in this act, “prisoner subject to disciplinary time” means that term as defined in section 34 of Act No. 118 of the Public Acts of 1893, being section 800.34 of the Michigan Compiled Laws.

History: Add. 1994, Act 217, Eff. Dec. 15, 1998.

Compiler's note: Section 2 of 1994 PA 217, which provides that “This amendatory act shall take effect on the date that sentencing guidelines are enacted into law after the sentencing commission submits its report to the secretary of the senate and the clerk of the house of representatives pursuant to sections 31 to 34 of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, as added by the amendatory act resulting from House Bill No. 4782 of the 87th Legislature.” was repealed by 1998 PA 316, effective Dec. 15, 1998.

Popular name: Department of Corrections Act

791.233d Samples for chemical testing.

Sec. 33d. (1) A prisoner shall not be released on parole, placed in a community placement facility of any kind, including a community corrections center or a community residential home, or discharged upon completion of his or her maximum sentence until he or she has provided samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and has provided samples for a determination of his or her secretor status. However, if at the time the prisoner is to be released, placed, or discharged the department of state police already has a sample from the prisoner that meets the requirements of the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176, the prisoner is not required to provide another sample or pay the fee required under subsection (4).

(2) The samples required to be collected under this section shall be collected by the department and transmitted by the department to the department of state police in the manner prescribed under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(3) The department may collect a sample under this section regardless of whether the prisoner consents to the collection. The department is not required to give the prisoner an opportunity for a hearing or obtain a court order before collecting the sample.

(4) A prisoner shall pay an assessment of \$60.00. The department shall transmit the assessments or portions of assessments collected to the department of treasury for the department of state police forensic science division to defray the costs associated with the requirements of DNA profiling and DNA retention prescribed under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(5) The DNA profiles of DNA samples received under this section shall only be disclosed as follows:

- (a) To a criminal justice agency for law enforcement identification purposes.
- (b) In a judicial proceeding as authorized or required by a court.
- (c) To a defendant in a criminal case if the DNA profile is used in conjunction with a charge against the

defendant.

(d) For an academic, research, statistical analysis, or protocol developmental purpose only if personal identifications are removed.

(6) As used in this section, "sample" means a portion of a prisoner's blood, saliva, or tissue collected from the prisoner.

History: Add. 1990, Act 251, Eff. Sept. 1, 1994;—Am. 1994, Act 164, Eff. Sept. 1, 1994;—Am. 1996, Act 509, Imd. Eff. Jan. 9, 1997;—Am. 2001, Act 86, Eff. Jan. 1, 2002.

Compiler's note: Section 2 of Act 251 of 1990 provides: "This amendatory act shall not take effect unless the sponsor of this bill provides an enacted source of revenue to fully fund the program and the legislature appropriates sufficient money to fund the program it creates."

Popular name: Department of Corrections Act

791.233e Parole guidelines; rules.

Sec. 33e. (1) The department shall develop parole guidelines that are consistent with section 33(1)(a) and that shall govern the exercise of the parole board's discretion pursuant to sections 34 and 35 as to the release of prisoners on parole under this act. The purpose of the parole guidelines shall be to assist the parole board in making release decisions that enhance the public safety.

(2) In developing the parole guidelines, the department shall consider factors including, but not limited to, the following:

(a) The offense for which the prisoner is incarcerated at the time of parole consideration.

(b) The prisoner's institutional program performance.

(c) The prisoner's institutional conduct.

(d) The prisoner's prior criminal record. As used in this subdivision, "prior criminal record" means the recorded criminal history of a prisoner, including all misdemeanor and felony convictions, probation violations, juvenile adjudications for acts that would have been crimes if committed by an adult, parole failures, and delayed sentences.

(e) Other relevant factors as determined by the department, if not otherwise prohibited by law.

(3) In developing the parole guidelines, the department may consider both of the following factors:

(a) The prisoner's statistical risk screening.

(b) The prisoner's age.

(4) The department shall ensure that the parole guidelines do not create disparities in release decisions based on race, color, national origin, gender, religion, or disability.

(5) The department shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, which shall prescribe the parole guidelines. The department shall submit the proposed rules to the joint committee on administrative rules not later than April 1, 1994. Until the rules take effect, the director shall require that the parole guidelines be considered by the parole board in making release decisions. After the rules take effect, the director shall require that the parole board follow the parole guidelines.

(6) The parole board may depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole as determined under the parole guidelines or by granting parole to a prisoner who has a low probability of parole as determined under the parole guidelines. A departure under this subsection shall be for substantial and compelling reasons stated in writing. The parole board shall not use a prisoner's gender, race, ethnicity, alienage, national origin, or religion to depart from the recommended parole guidelines.

(7) Not less than once every 2 years, the department shall review the correlation between the implementation of the parole guidelines and the recidivism rate of paroled prisoners, and shall submit to the joint committee on administrative rules any proposed revisions to the administrative rules that the department considers appropriate after conducting the review.

History: Add. 1992, Act 181, Imd. Eff. Sept. 22, 1992.

Popular name: Department of Corrections Act

791.234 Prisoners subject to jurisdiction of parole board; indeterminate and other sentences; termination of sentence; ineligibility for parole; interview; release on parole; discretion of parole board; appeal to circuit court; cooperation with law enforcement by prisoner violating MCL 333.7401; conviction before effective date of amendatory act; definitions.

Sec. 34. (1) Except as provided in section 34a, a prisoner sentenced to an indeterminate sentence and confined in a state correctional facility with a minimum in terms of years other than a prisoner subject to disciplinary time is subject to the jurisdiction of the parole board when the prisoner has served a period of

time equal to the minimum sentence imposed by the court for the crime of which he or she was convicted, less good time and disciplinary credits, if applicable.

(2) Except as provided in section 34a, a prisoner subject to disciplinary time sentenced to an indeterminate sentence and confined in a state correctional facility with a minimum in terms of years is subject to the jurisdiction of the parole board when the prisoner has served a period of time equal to the minimum sentence imposed by the court for the crime of which he or she was convicted.

(3) If a prisoner other than a prisoner subject to disciplinary time is sentenced for consecutive terms, whether received at the same time or at any time during the life of the original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms, less the good time and disciplinary credits allowed by statute. The maximum terms of the sentences shall be added to compute the new maximum term under this subsection, and discharge shall be issued only after the total of the maximum sentences has been served less good time and disciplinary credits, unless the prisoner is paroled and discharged upon satisfactory completion of the parole.

(4) If a prisoner subject to disciplinary time is sentenced for consecutive terms, whether received at the same time or at any time during the life of the original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms. The maximum terms of the sentences shall be added to compute the new maximum term under this subsection, and discharge shall be issued only after the total of the maximum sentences has been served, unless the prisoner is paroled and discharged upon satisfactory completion of the parole.

(5) If a prisoner other than a prisoner subject to disciplinary time has 1 or more consecutive terms remaining to serve in addition to the term he or she is serving, the parole board may terminate the sentence the prisoner is presently serving at any time after the minimum term of the sentence has been served.

(6) A prisoner sentenced to imprisonment for life for any of the following is not eligible for parole and is instead subject to the provisions of section 44:

(a) First degree murder in violation of section 316 of the Michigan penal code, 1931 PA 328, MCL 750.316.

(b) A violation of section 16(5) or 18(7) of the Michigan penal code, 1931 PA 328, MCL 750.16 and 750.18.

(c) A violation of chapter XXXIII of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a.

(d) A violation of section 17764(7) of the public health code, 1978 PA 368, MCL 333.17764.

(e) First degree criminal sexual conduct in violation of section 520b(2)(c) of the Michigan penal code, 1931 PA 328, MCL 750.520b.

(f) Any other violation for which parole eligibility is expressly denied under state law.

(7) A prisoner sentenced to imprisonment for life, other than a prisoner described in subsection (6), is subject to the jurisdiction of the parole board and may be placed on parole according to the conditions prescribed in subsection (8) if he or she meets any of the following criteria:

(a) Except as provided in subdivision (b) or (c), the prisoner has served 10 calendar years of the sentence for a crime committed before October 1, 1992 or 15 calendar years of the sentence for a crime committed on or after October 1, 1992.

(b) Except as provided in subsection (12), the prisoner has served 20 calendar years of a sentence for violating or conspiring to violate section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401, and has another conviction for a serious crime.

(c) Except as provided in subsection (12), the prisoner has served 17-1/2 calendar years of the sentence for violating or conspiring to violate section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401, and does not have another conviction for a serious crime.

(8) A parole granted to a prisoner under subsection (7) is subject to the following conditions:

(a) At the conclusion of 10 calendar years of the prisoner's sentence and thereafter as determined by the parole board until the prisoner is paroled, discharged, or deceased, and in accordance with the procedures described in subsection (9), 1 member of the parole board shall interview the prisoner. The interview schedule prescribed in this subdivision applies to all prisoners to whom subsection (7) applies, regardless of the date on which they were sentenced.

(b) In addition to the interview schedule prescribed in subdivision (a), the parole board shall review the prisoner's file at the conclusion of 15 calendar years of the prisoner's sentence and every 5 years thereafter until the prisoner is paroled, discharged, or deceased. A prisoner whose file is to be reviewed under this subdivision shall be notified of the upcoming file review at least 30 days before the file review takes place and shall be allowed to submit written statements or documentary evidence for the parole board's consideration in conducting the file review.

(c) A decision to grant or deny parole to the prisoner shall not be made until after a public hearing held in

the manner prescribed for pardons and commutations in sections 44 and 45. Notice of the public hearing shall be given to the sentencing judge, or the judge's successor in office, and parole shall not be granted if the sentencing judge, or the judge's successor in office, files written objections to the granting of the parole within 30 days of receipt of the notice of hearing. The written objections shall be made part of the prisoner's file.

(d) A parole granted under subsection (7) shall be for a period of not less than 4 years and subject to the usual rules pertaining to paroles granted by the parole board. A parole granted under subsection (7) is not valid until the transcript of the record is filed with the attorney general whose certification of receipt of the transcript shall be returnable to the office of the parole board within 5 days. Except for medical records protected under section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157, the file of a prisoner granted a parole under subsection (7) is a public record.

(9) An interview conducted under subsection (8)(a) is subject to both of the following requirements:

(a) The prisoner shall be given written notice, not less than 30 days before the interview date, stating that the interview will be conducted.

(b) The prisoner may be represented at the interview by an individual of his or her choice. The representative shall not be another prisoner. A prisoner is not entitled to appointed counsel at public expense. The prisoner or representative may present relevant evidence in favor of holding a public hearing as allowed in subsection (8)(b).

(10) In determining whether a prisoner convicted of violating or conspiring to violate section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401, and sentenced to imprisonment for life before October 1, 1998 is to be released on parole, the parole board shall consider all of the following:

(a) Whether the violation was part of a continuing series of violations of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, by that individual.

(b) Whether the violation was committed by the individual in concert with 5 or more other individuals.

(c) Any of the following:

(i) Whether the individual was a principal administrator, organizer, or leader of an entity that the individual knew or had reason to know was organized, in whole or in part, to commit violations of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and whether the violation for which the individual was convicted was committed to further the interests of that entity.

(ii) Whether the individual was a principal administrator, organizer, or leader of an entity that the individual knew or had reason to know committed violations of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and whether the violation for which the individual was convicted was committed to further the interests of that entity.

(iii) Whether the violation was committed in a drug-free school zone.

(iv) Whether the violation involved the delivery of a controlled substance to an individual less than 17 years of age or possession with intent to deliver a controlled substance to an individual less than 17 years of age.

(11) Except as provided in section 34a, a prisoner's release on parole is discretionary with the parole board. The action of the parole board in granting a parole is appealable by the prosecutor of the county from which the prisoner was committed or the victim of the crime for which the prisoner was convicted. The appeal shall be to the circuit court in the county from which the prisoner was committed, by leave of the court.

(12) If the sentencing judge, or his or her successor in office, determines on the record that a prisoner described in subsection (7)(b) or (c) sentenced to imprisonment for life for violating or conspiring to violate section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401, has cooperated with law enforcement, the prisoner is subject to the jurisdiction of the parole board and may be released on parole as provided in subsection (7)(b) or (c) 2-1/2 years earlier than the time otherwise indicated in subsection (7)(b) or (c). The prisoner is considered to have cooperated with law enforcement if the court determines on the record that the prisoner had no relevant or useful information to provide. The court shall not make a determination that the prisoner failed or refused to cooperate with law enforcement on grounds that the defendant exercised his or her constitutional right to trial by jury. If the court determines at sentencing that the defendant cooperated with law enforcement, the court shall include its determination in the judgment of sentence.

(13) An individual convicted of violating or conspiring to violate section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003 is eligible for parole after serving the minimum of each sentence imposed for that violation or 10 years of each sentence imposed for that violation, whichever is less.

(14) An individual convicted of violating or conspiring to violate section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003 is eligible for parole after serving the minimum of each sentence imposed for that violation or 5 years of each sentence

imposed for that violation, whichever is less.

(15) An individual convicted of violating or conspiring to violate section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003 who is sentenced to a term of imprisonment that is consecutive to a term of imprisonment imposed for any other violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i) to (iv) is eligible for parole after serving 1/2 of the minimum sentence imposed for each violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv). This subsection does not apply if the sentence was imposed for a conviction for a new offense committed while the individual is on probation or parole.

(16) The parole board shall provide notice to the prosecuting attorney of the county in which the individual was convicted before granting parole to the individual under subsection (13), (14), or (15).

(17) As used in this section:

(a) "Serious crime" means violating or conspiring to violate article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, that is punishable by imprisonment for more than 4 years, or an offense against a person in violation of section 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b, 750.520c, 750.520d, 750.529, 750.529a, and 750.530.

(b) "State correctional facility" means a facility that houses prisoners committed to the jurisdiction of the department, and includes a youth correctional facility operated under section 20g by the department or a private vendor.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1955, Act 107, Imd. Eff. June 3, 1955;—Am. 1957, Act 192, Eff. Sept. 27, 1957;—Am. 1958, Act 210, Eff. Sept. 13, 1958;—Am. 1978, Act 81, Eff. Sept. 1, 1978;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1992, Act 22, Imd. Eff. Mar. 19, 1992;—Am. 1992, Act 181, Imd. Eff. Sept. 22, 1992;—Am. 1994, Act 217, Eff. Dec. 15, 1998;—Am. 1994, Act 345, Eff. Jan. 1, 1995;—Am. 1998, Act 209, Eff. Oct. 1, 1998;—Am. 1998, Act 314, Eff. Oct. 1, 1998;—Am. 1998, Act 315, Eff. Dec. 15, 1998;—Am. 1998, Act 512, Imd. Eff. Jan. 8, 1999;—Am. 1999, Act 191, Eff. Mar. 10, 2000;—Am. 2002, Act 670, Eff. Mar. 1, 2003;—Am. 2004, Act 218, Eff. Oct. 12, 2004;—Am. 2006, Act 167, Eff. Aug. 28, 2006.

Constitutionality: A mandatory sentence of life without parole does not violate the prohibition against cruel and unusual punishments of the Eighth Amendment to the United States Constitution, because the Eighth Amendment contains no proportionality guarantee. Neither does the Eighth Amendment prohibit the imposition of mandatory sentences -- "severe, mandatory penalties may be cruel, but they are not unusual in the constitutional sense ... " -- nor does it require consideration of individualized, mitigating circumstances beyond those cases in which a capital sentence is imposed. Harmelin v Michigan, 501 US 957; 111 S Ct 2680; 115 L Ed2d 836 (1991).

In People v Bullock, 440 Mich 15; 485 NW2d 866 (1992), the Michigan Supreme Court held that the Michigan Constitution prohibits cruel or unusual punishment while the Eighth Amendment to the US Constitution bars only punishment that is both cruel and unusual. Basing its decision on the textual difference, the Michigan Supreme Court held that the statutory penalty of mandatory life in prison without parole for possession of 650 grams or more of any mixture containing cocaine is so grossly disproportionate as to be cruel or unusual, the result being that those portions of the statutes denying parole consideration are struck down.

Popular name: Department of Corrections Act

***** 791.234a THIS SECTION IS REPEALED BY ACT 107 OF 2009 EFFECTIVE SEPTEMBER 30, 2010 *****

791.234a Placement of prisoner in special alternative incarceration unit.

Sec. 34a. (1) A prisoner sentenced to an indeterminate term of imprisonment under the jurisdiction of the department, regardless of when he or she was sentenced, shall be considered by the department for placement in a special alternative incarceration unit established under section 3 of the special alternative incarceration act, 1988 PA 287, MCL 798.13, if the prisoner meets the eligibility requirements of subsections (2) and (3). For a prisoner committed to the jurisdiction of the department on or after March 19, 1992, the department shall determine before the prisoner leaves the reception center whether the prisoner is eligible for placement in a special alternative incarceration unit, although actual placement may take place at a later date. A determination of eligibility does not guarantee placement in a unit.

(2) To be eligible for placement in a special alternative incarceration unit, the prisoner shall meet all of the following requirements:

(a) The prisoner's minimum sentence does not exceed either of the following limits, as applicable:

(i) Twenty-four months or less for a violation of section 110 of the Michigan penal code, 1931 PA 328, MCL 750.110, if the violation involved any occupied dwelling house.

(ii) Thirty-six months or less for any other crime.

(b) The prisoner has never previously been placed in a special alternative incarceration unit as either a prisoner or a probationer, unless he or she was removed from a special alternative incarceration unit for medical reasons as specified in subsection (7). This subdivision applies only to placements occurring on or

after October 1, 2009, and does not apply to a prisoner placed in a special alternative incarceration unit before that date.

(c) The prisoner is physically able to participate in the program.

(d) The prisoner does not appear to have any mental disability that would prevent participation in the program.

(e) The prisoner is serving his or her first prison sentence.

(f) At the time of sentencing, the judge did not prohibit participation in the program in the judgment of sentence.

(g) The prisoner is otherwise suitable for the program, as determined by the department.

(h) The prisoner is not serving a sentence for any of the following crimes:

(i) A violation of section 11, 49, 80, 83, 89, 91, 157b, 158, 207, 260, 316, 317, 327, 328, 335a, 338, 338a, 338b, 349, 349a, 350, 422, 436, 511, 520b, 529, 529a, 531, or 544 of the Michigan penal code, 1931 PA 328, MCL 750.11, 750.49, 750.80, 750.83, 750.89, 750.91, 750.157b, 750.158, 750.207, 750.260, 750.316, 750.317, 750.327, 750.328, 750.335a, 750.338, 750.338a, 750.338b, 750.349, 750.349a, 750.350, 750.422, 750.436, 750.511, 750.520b, 750.529, 750.529a, 750.531, and 750.544.

(ii) A violation of section 145c, 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145c, 750.520c, 750.520d, and 750.520g.

(iii) A violation of section 72, 73, or 75 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.73, and 750.75.

(iv) A violation of section 86, 112, 136b, 193, 195, 213, 319, 321, 329, or 397 of the Michigan penal code, 1931 PA 328, MCL 750.86, 750.112, 750.136b, 750.193, 750.195, 750.213, 750.319, 750.321, 750.329, and 750.397.

(v) A violation of section 2 of 1968 PA 302, MCL 752.542.

(vi) An attempt to commit a crime described in subparagraphs (i) to (v).

(vii) A violation occurring on or after January 1, 1992, of section 625(4) or (5) of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

(viii) A crime for which the prisoner was punished pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

(3) A prisoner who is serving a sentence for a violation of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and who has previously been convicted for a violation of section 7401 or 7403(2)(a), (b), or (e) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is not eligible for placement in a special alternative incarceration unit until after he or she has served the equivalent of the mandatory minimum sentence prescribed by statute for that violation.

(4) If the sentencing judge prohibited a prisoner's participation in the special alternative incarceration program in the judgment of sentence, that prisoner shall not be placed in a special alternative incarceration unit. If the sentencing judge permitted the prisoner's participation in the special alternative incarceration program in the judgment of sentence, that prisoner may be placed in a special alternative incarceration unit if the department determines that the prisoner also meets the requirements of subsections (2) and (3). If the sentencing judge neither prohibited nor permitted a prisoner's participation in the special alternative incarceration program in the judgment of sentence, or if the prisoner is serving his or her sentence regardless of whether or not the judge permitted the prisoner's participation in the program, and the department determines that the prisoner meets the eligibility requirements of subsections (2) and (3), the department shall notify the judge or the judge's successor, the prosecuting attorney for the county in which the prisoner was sentenced, and any victim of the crime for which the prisoner was committed if the victim has submitted to the department a written request for any notification pursuant to section 19(1) of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.769, of the proposed placement of the prisoner in the special alternative incarceration unit. The notices shall be sent not later than 30 days before placement is intended to occur. The department shall not place the prisoner in a special alternative incarceration unit unless the sentencing judge, or the judge's successor, notifies the department, in writing, that he or she does not object to the proposed placement. In making the decision on whether or not to object, the judge, or judge's successor, shall review any impact statement submitted pursuant to section 14 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.764, by the victim or victims of the crime of which the prisoner was convicted.

(5) Notwithstanding subsection (4), a prisoner shall not be placed in a special alternative incarceration unit unless the prisoner consents to that placement and agrees that the department may suspend or restrict privileges generally afforded other prisoners including, but not limited to, the areas of visitation, property, mail, publications, commissary, library, and telephone access. However, the department may not suspend or restrict the prisoner's access to the prisoner grievance system.

(6) Beginning September 30, 2008, and notwithstanding subsections (4) and (5), a prisoner shall not be placed in a special alternative incarceration unit unless all of the following conditions are met for the prisoner at the special alternative incarceration unit:

(a) Upon entry into the special alternative incarceration unit, a validated risk and need assessment from which a prisoner-specific transition accountability plan and prisoner-specific programming during program enrollment are utilized.

(b) Interaction with community-based service providers through established prison in-reach services from the community to which the prisoner will return is utilized.

(c) Prisoner discharge planning is utilized.

(d) Community follow-up services are utilized.

(7) A prisoner may be placed in a special alternative incarceration program for a period of not less than 90 days or more than 120 days. If, during that period, the prisoner misses more than 5 days of program participation due to medical excuse for illness or injury occurring after he or she was placed in the program, the period of placement shall be increased by the number of days missed, beginning with the sixth day of medical excuse, up to a maximum of 20 days. However, the total number of days a prisoner may be placed in this program, including days missed due to medical excuse, shall not exceed 120 days. A medical excuse shall be verified by a physician's statement. A prisoner who is medically unable to participate in the program for more than 25 days shall be returned to a state correctional facility but may be reassigned to the program if the prisoner meets the eligibility requirements of subsections (2) and (3).

(8) Upon certification of completion of the special alternative incarceration program, the prisoner shall be placed on parole. A prisoner paroled under this section shall have conditions of parole as determined appropriate by the parole board and shall be placed on parole for not less than 18 months, or the balance of the prisoner's minimum sentence, whichever is greater, with at least the first 120 days under intensive supervision.

(9) The parole board may suspend or revoke parole for any prisoner paroled under this section subject to sections 39a and 40a. For a prisoner other than a prisoner subject to disciplinary time, if parole is revoked before the expiration of the prisoner's minimum sentence, less disciplinary credits, the parole board shall forfeit, pursuant to section 33(13) of 1893 PA 118, MCL 800.33, all disciplinary credits that were accumulated during special alternative incarceration, and the prisoner shall be considered for parole pursuant to section 35.

(10) On March 19, 1993, and annually after that time, the department shall report to the legislature the impact of the operation of this section, including a report concerning recidivism.

(11) The department shall contract annually for third-party evaluations that report on both of the following:

(a) The implementation of the requirements of subsection (6).

(b) The success of the special alternative incarceration program as revised under subsection (6), as evidenced by the extent to which participants subsequently violate the conditions of their parole, have their orders of parole revoked, or revictimize as evidenced by being arrested or convicted for new offenses, absconding from parole, or having outstanding warrants.

(12) Each prisoner or probationer placed in the special alternative incarceration program shall fully participate in the Michigan prisoner reentry initiative not later than the following date, as applicable:

(a) Each prisoner serving his or her second prison sentence shall participate not later than June 1, 2008.

(b) Each prisoner serving his or her first prison sentence shall participate not later than August 1, 2008.

(c) Each probationer shall participate not later than September 1, 2008.

(13) This section is repealed effective September 30, 2010.

History: Add. 2009, Act 107, Imd. Eff. Oct. 1, 2009.

Compiler's note: Former MCL 791.234a, which pertained to placement in special alternative incarceration unit, was repealed by Act 158 of 2008, Eff. Sept. 30, 2009.

Popular name: Department of Corrections Act

791.235 Release of prisoner on parole; procedure.

Sec. 35. (1) The release of a prisoner on parole shall be granted solely upon the initiative of the parole board. The parole board may grant a parole without interviewing the prisoner. However, beginning on the date on which the administrative rules prescribing parole guidelines pursuant to section 33e(5) take effect, the parole board may grant a parole without interviewing the prisoner only if, after evaluating the prisoner according to the parole guidelines, the parole board determines that the prisoner has a high probability of being paroled and the parole board therefore intends to parole the prisoner. Except as provided in subsection (2), a prisoner shall not be denied parole without an interview before 1 member of the parole board. The interview shall be conducted at least 1 month before the expiration of the prisoner's minimum sentence less

applicable good time and disciplinary credits for a prisoner eligible for good time and disciplinary credits, or at least 1 month before the expiration of the prisoner's minimum sentence for a prisoner subject to disciplinary time. The parole board shall consider any statement made to the parole board by a crime victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or under any other provision of law. The parole board shall not consider any of the following factors in making a parole determination:

(a) A juvenile record that a court has ordered the department to expunge.

(b) Information that is determined by the parole board to be inaccurate or irrelevant after a challenge and presentation of relevant evidence by a prisoner who has received a notice of intent to conduct an interview as provided in subsection (4). This subdivision applies only to presentence investigation reports prepared before April 1, 1983.

(2) Beginning on the date on which the administrative rules prescribing the parole guidelines take effect pursuant to section 33e(5), if, after evaluating a prisoner according to the parole guidelines, the parole board determines that the prisoner has a low probability of being paroled and the parole board therefore does not intend to parole the prisoner, the parole board shall not be required to interview the prisoner before denying parole to the prisoner.

(3) The parole board may consider but shall not base a determination to deny parole solely on either of the following:

(a) A prisoner's marital history.

(b) Prior arrests not resulting in conviction or adjudication of delinquency.

(4) If an interview is to be conducted, the prisoner shall be sent a notice of intent to conduct an interview at least 1 month before the date of the interview. The notice shall state the specific issues and concerns that shall be discussed at the interview and that may be a basis for a denial of parole. A denial of parole shall not be based on reasons other than those stated in the notice of intent to conduct an interview except for good cause stated to the prisoner at or before the interview and in the written explanation required by subsection (12). This subsection does not apply until April 1, 1983.

(5) Except for good cause, the parole board member conducting the interview shall not have cast a vote for or against the prisoner's release before conducting the current interview. Before the interview, the parole board member who is to conduct the interview shall review pertinent information relative to the notice of intent to conduct an interview.

(6) A prisoner may waive the right to an interview by 1 member of the parole board. The waiver of the right to be interviewed shall be given not more than 30 days after the notice of intent to conduct an interview is issued and shall be made in writing. During the interview held pursuant to a notice of intent to conduct an interview, the prisoner may be represented by an individual of his or her choice. The representative shall not be another prisoner or an attorney. A prisoner is not entitled to appointed counsel at public expense. The prisoner or representative may present relevant evidence in support of release. This subsection does not apply until April 1, 1983.

(7) At least 90 days before the expiration of the prisoner's minimum sentence less applicable good time and disciplinary credits for a prisoner eligible for good time or disciplinary credits, or at least 90 days before the expiration of the prisoner's minimum sentence for a prisoner subject to disciplinary time, or the expiration of a 12-month continuance for any prisoner, a parole eligibility report shall be prepared by appropriate institutional staff. The parole eligibility report shall be considered pertinent information for purposes of subsection (5). The report shall include all of the following:

(a) A statement of all major misconduct charges of which the prisoner was found guilty and the punishment served for the misconduct.

(b) The prisoner's work and educational record while confined.

(c) The results of any physical, mental, or psychiatric examinations of the prisoner that may have been performed.

(d) Whether the prisoner fully cooperated with the state by providing complete financial information as required under section 3a of the state correctional facility reimbursement act, 1935 PA 253, MCL 800.403a.

(e) For a prisoner subject to disciplinary time, a statement of all disciplinary time submitted for the parole board's consideration pursuant to section 34 of 1893 PA 118, MCL 800.34.

(8) The preparer of the report shall not include a recommendation as to release on parole.

(9) Psychological evaluations performed at the request of the parole board to assist it in reaching a decision on the release of a prisoner may be performed by the same person who provided the prisoner with therapeutic treatment, unless a different person is requested by the prisoner or parole board.

(10) The parole board may grant a medical parole for a prisoner determined to be physically or mentally incapacitated. A decision to grant a medical parole shall be initiated upon the recommendation of the bureau of health care services and shall be reached only after a review of the medical, institutional, and criminal

records of the prisoner.

(11) The department shall submit a petition to the appropriate court under section 434 of the mental health code, 1974 PA 258, MCL 330.1434, for any prisoner being paroled or being released after serving his or her maximum sentence whom the department considers to be a person requiring treatment. The parole board shall require mental health treatment as a special condition of parole for any parolee whom the department has determined to be a person requiring treatment whether or not the petition filed for that prisoner is granted by the court. As used in this subsection, "person requiring treatment" means that term as defined in section 401 of the mental health code, 1974 PA 258, MCL 330.1401.

(12) When the parole board makes a final determination not to release a prisoner, the prisoner shall be provided with a written explanation of the reason for denial and, if appropriate, specific recommendations for corrective action the prisoner may take to facilitate release.

(13) This section does not apply to the placement on parole of a person in conjunction with special alternative incarceration under section 34a(7).

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1984, Act 414, Eff. Mar. 29, 1985;—Am. 1992, Act 22, Imd. Eff. Mar. 19, 1992;—Am. 1992, Act 181, Imd. Eff. Sept. 22, 1992;—1994, Act 217, Eff. Dec. 15, 1998;—Am. 1998, Act 315, Eff. Dec. 15, 1998.

Transfer of powers: See MCL 791.301.

Popular name: Department of Corrections Act

791.236 Order of parole; signature by chairperson; notice; rescission; amendment; conditions; supervision; restitution; payment of parole supervision fee; condition requiring payment of assessment or minimum state cost; compliance with sex offenders registration act; violation of certain sections; condition requiring housing in community corrections center or community residential home; condition requiring payment by parolee; review to ensure payment of restitution; report of violation; registration of parolee; electronic monitoring; condition to protect named person; release of prisoner; notice of residence or domicile; monitoring by global positioning monitoring system; "violent felony" defined.

Sec. 36. (1) All paroles shall be ordered by the parole board and shall be signed by the chairperson. Written notice of the order shall be given to the sheriff or other police officer of the municipality or county in which the prisoner was convicted, and to the sheriff or other local police officer of the municipality or county to which the paroled prisoner is sent.

(2) A parole order may be rescinded at the discretion of the parole board for cause before the prisoner is released on parole. A parole shall not be revoked unless an interview with the prisoner is conducted by 1 member of the parole board. The purpose of the interview is to consider and act upon information received by the board after the original parole release decision. A revocation interview shall be conducted within 45 days after receiving the new information. At least 10 days before the interview, the parolee shall receive a copy or summary of the new evidence that is the basis for the interview.

(3) A parole order may be amended at the discretion of the parole board for cause. An amendment to a parole order shall be in writing and is not effective until notice of the amendment is given to the parolee.

(4) When a parole order is issued, the order shall contain the conditions of the parole and shall specifically provide proper means of supervision of the paroled prisoner in accordance with the rules of the bureau of field services.

(5) The parole order shall contain a condition to pay restitution to the victim of the prisoner's crime or the victim's estate if the prisoner was ordered to make restitution pursuant to the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69.

(6) The parole order shall contain a condition requiring the parolee to pay a parole supervision fee as prescribed in section 36a.

(7) The parole order shall contain a condition requiring the parolee to pay any assessment the prisoner was ordered to pay pursuant to section 5 of 1989 PA 196, MCL 780.905.

(8) The parole order shall contain a condition requiring the parolee to pay the minimum state cost prescribed by section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j, if the minimum state cost has not been paid.

(9) If the parolee is required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, the parole order shall contain a condition requiring the parolee to comply with that act.

(10) If a prisoner convicted of violating or conspiring to violate section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i)

) or (ii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is released on parole, the parole order shall contain a notice that if the parolee violates or conspires to violate article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, and that violation or conspiracy to violate is punishable by imprisonment for 4 or more years, or commits a violent felony during his or her release on parole, parole shall be revoked.

(11) A parole order issued for a prisoner subject to disciplinary time may contain a condition requiring the parolee to be housed in a community corrections center or a community residential home for not less than the first 30 days but not more than the first 180 days of his or her term of parole. As used in this subsection, "community corrections center" and "community residential home" mean those terms as defined in section 65a.

(12) The parole order shall contain a condition requiring the parolee to pay the following amounts owed by the prisoner, if applicable:

(a) The balance of filing fees and costs ordered to be paid under section 2963 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2963.

(b) The balance of any filing fee ordered to be paid by a federal court under section 1915 of title 28 of the United States Code, 28 USC 1915 and any unpaid order of costs assessed against the prisoner.

(13) In each case in which payment of restitution is ordered as a condition of parole, a parole officer assigned to a case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review shall be conducted not less than 60 days before the expiration of the parole period. If the parole officer determines that restitution is not being paid as ordered, the parole officer shall file a written report of the violation with the parole board on a form prescribed by the parole board. The report shall include a statement of the amount of arrearage and any reasons for the arrearage known by the parole officer. The parole board shall immediately provide a copy of the report to the court, the prosecuting attorney, and the victim.

(14) If a parolee is required to register pursuant to the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, the parole officer shall register the parolee as provided in that act.

(15) Beginning August 28, 2006, if a parolee convicted of violating or conspiring to violate section 520b or 520c of the Michigan penal code, 1931 PA 328, MCL 750.520b and 750.520c, other than a parolee who is subject to lifetime electronic monitoring under section 85, is placed on parole, the parole board may require that the parolee be subject to electronic monitoring. The electronic monitoring required under this subsection shall be conducted in the same manner, and shall be subject to the same requirements, as is described in section 85 of this act and section 520n(2) of the Michigan penal code, 1931 PA 328, MCL 750.520n, except as follows:

(a) The electronic monitoring shall continue only for the duration of the term of parole.

(b) A violation by the parolee of any requirement prescribed in section 520n(2)(a) to (c) is a violation of a condition of parole, not a felony violation.

(16) If the parole order contains a condition intended to protect 1 or more named persons, the department shall enter those provisions of the parole order into the corrections management information system, accessible by the law enforcement information network. If the parole board rescinds a parole order described in this subsection, the department within 3 business days shall remove from the corrections management information system the provisions of that parole order.

(17) Each prisoner who is required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, before being released on parole or being released upon completion of his or her maximum sentence, shall provide to the department notice of the location of his or her proposed place of residence or domicile. The department then shall forward that notice of location to the appropriate law enforcement agency as required under section 5(2) of the sex offenders registration act, 1994 PA 295, MCL 28.725. A prisoner who refuses to provide notice of the location of his or her proposed place of residence or domicile or knowingly provides an incorrect notice of the location of his or her proposed place of residence or domicile under this subsection is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(18) If a prisoner is serving a sentence for violating section 411i of the Michigan penal code, 1931 PA 328, MCL 750.411i (aggravated stalking), and if a victim of that crime has registered to receive notices about that prisoner under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the parole order for that prisoner shall require that the prisoner's location be monitored by a global positioning monitoring system during the entire period of the prisoner's parole. If, at the time a prisoner described in this subsection is paroled, no victim of the crime has registered to receive notices about that prisoner under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, but a victim of the crime subsequently registers to receive those notices, the prisoner's order of

parole shall immediately be modified to require that the prisoner's location be monitored by a global positioning system during the balance of the period of that prisoner's parole. As used in this subsection, "global positioning monitoring system" means a system that electronically determines and reports the location of an individual by means of an ankle bracelet transmitter or similar device worn by the individual, which transmits latitude and longitude data to monitoring authorities through global positioning satellite technology but does not include any radio frequency identification technology, global positioning technology, or similar technology that would be implanted in the parolee or would otherwise violate the corporeal body of the parolee.

(19) As used in this section, "violent felony" means an offense against a person in violation of section 82, 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520e, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328, MCL 750.82, 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b, 750.520c, 750.520d, 750.520e, 750.520g, 750.529, 750.529a, and 750.530.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1985, Act 85, Eff. July 10, 1985;—Am. 1989, Act 185, Eff. Oct. 1, 1989;—Am. 1993, Act 346, Eff. May 1, 1994;—Am. 1994, Act 217, Eff. Dec. 15, 1998;—Am. 1994, Act 287, Eff. Oct. 1, 1995;—Am. 1996, Act 554, Eff. June 1, 1997;—Am. 1998, Act 314, Eff. Oct. 1, 1998;—Am. 1998, Act 315, Eff. Dec. 15, 1998;—Am. 1999, Act 271, Eff. July 1, 2000;—Am. 2003, Act 75, Eff. Oct. 1, 2003;—Am. 2006, Act 168, Eff. Aug. 28, 2006;—Am. 2006, Act 316, Imd. Eff. July 20, 2006;—Am. 2006, Act 403, Eff. Dec. 1, 2006;—Am. 2008, Act 191, Imd. Eff. July 10, 2008.

Popular name: Department of Corrections Act

791.236a Collection of supervision fee by parole board; limitation; payment; determination of amount; allocation of money collected for other obligations; waiver of fee; determination and collection of fee for offender transferred to state under interstate compact; administrative costs; unpaid amounts.

Sec. 36a. (1) The parole board shall include in each order of parole that the department of corrections shall collect a parole supervision fee of not more than \$135.00 multiplied by the number of months of parole ordered, but not more than 60 months. The fee is payable when the parole order is entered, but the fee may be paid in monthly installments if the parole board approves installment payments for that parolee. In determining the amount of the fee, the parole board shall consider the parolee's projected income and financial resources. The parole board shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
\$ 0-249.99	\$ 0.00
\$250.00-499.99	\$10.00
\$500.00-749.99	\$25.00
\$750.00-999.99	\$40.00
\$ 1,000.00 or more	5% of monthly income, but not more than \$135.00

The parole board may order a higher amount than indicated by the table, up to the maximum of \$135.00 multiplied by the number of months of parole ordered but not more than 60 months, if the parole board determines that the parolee has sufficient assets or other financial resources to warrant the higher amount. If the parole board orders a higher amount, the amount and the reasons for ordering that amount shall be stated in the parole order.

(2) If a person who is subject to a supervision fee is also subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same criminal proceeding, the allocation of money collected for those obligations shall be as provided in section 22 of chapter XV of the code of criminal procedure, 1927 PA 175, MCL 775.22.

(3) A person shall not be subject to more than 1 parole supervision fee at the same time. If a parole supervision fee is ordered for a parolee for any month or months during which that parolee already is subject to a parole supervision fee, the department shall waive the fee having the shorter remaining duration.

(4) The department shall waive the parole supervision fee for a parolee who is transferred to another state under the interstate compact entered into pursuant to 1935 PA 89, MCL 798.101 to 798.103, or the interstate compact entered into pursuant to 2002 PA 40, MCL 3.1011 to 3.1012, for the months during which he or she is in another state. The department shall collect a parole supervision fee of not more than \$135.00 per month for each month of parole supervision in this state for an offender transferred to this state under an interstate compact. In determining the amount of the fee, the department shall consider the parolee's projected income

and financial resources. The department shall use the following table of projected monthly income in determining the amount of the fee:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
\$ 0-249.99	\$ 0.00
\$250.00-499.99	\$10.00
\$500.00-749.99	\$25.00
\$750.00-999.99	\$40.00
\$ 1,000.00 or more	5% of monthly income, but not more than \$135.00

The department may collect a higher amount than indicated by the table, up to the maximum of \$135.00 for each month of parole supervision in this state, if the department determines that the parolee has sufficient assets or other financial resources to warrant the higher amount. If the department collects a higher amount, the amount and the reasons for collecting that amount shall be stated in the department records.

(5) Twenty percent of the money collected by the department under this section shall be allocated for administrative costs incurred by the department in collecting parole supervision fees and for enhanced services, as described in this subsection. Enhanced services include, but are not limited to, the purchase of services for parolees such as counseling, employment training, employment placement, or education; public transportation expenses related to training, counseling, or employment; enhancement of staff performance through specialized training and equipment purchase; and purchase of items for parolee employment. At the end of each fiscal year, the unexpended balance of the money allocated for administrative costs and enhanced services shall be available for carryforward to be used for the purposes described in this subsection in subsequent fiscal years.

(6) If a parolee has not paid the full amount of the parole supervision fee upon being discharged from parole, the department shall review and compare the actual income of the person during the period of parole with the income amount projected when the parole supervision fee was ordered. If the department determines that the parolee's actual income did not equal or exceed the projected income, the department shall waive any unpaid amount in excess of the total amount that the parolee would have been ordered to pay if the parolee's income had been accurately projected, unless the parole order states that a higher amount was ordered due to available assets or other financial resources. Any unpaid amounts not waived by the department shall be reported to the department of treasury. The department of treasury shall attempt to collect the unpaid balances pursuant to section 30a of 1941 PA 122, MCL 205.30a. Money collected under this subsection shall not be allocated for the purposes described in subsection (5).

History: Add. 1989, Act 185, Eff. Oct. 1, 1989;—Am. 1993, Act 184, Imd. Eff. Sept. 30, 1993;—Am. 1993, Act 346, Imd. Eff. Jan. 10, 1994;—Am. 2002, Act 502, Imd. Eff. July 16, 2002.

Popular name: Department of Corrections Act

791.237 Paroled or discharged prisoner; furnishing clothing, transportation, and money; repayment of money; cost of implementing section.

Sec. 37. (1) When a prisoner is released upon parole, the department shall provide the prisoner with clothing and a nontransferable ticket to the place in which the paroled prisoner is to reside. At the discretion of the deputy director in charge of the bureau of field services, the paroled prisoner may be advanced the expense of the transportation to the place of residence and a sum of money necessary for reasonable maintenance and subsistence for a 2-week period, as determined by the deputy director. A sum of money given under this section shall be repaid to the state by the paroled prisoner within 180 days after the money is received by the paroled prisoner.

(2) If a prisoner who is discharged without being paroled has less than \$75.00 in his or her immediate possession, has no visible means of support, and has conserved personal funds in a reasonable manner, the department shall furnish to that prisoner the following:

(a) Clothing that is appropriate for the season.

(b) A sum of \$75.00 including that amount already in the prisoner's possession.

(c) Transportation to a place in this state where the prisoner will reside or work or to the place where the prisoner was convicted or sentenced.

(3) When providing for transportation, the department shall:

(a) Use the most economical available public transportation.

(b) Arrange for and purchase the prisoner's transportation ticket.

(c) Assume responsibility for delivering that prisoner to the site of departure and confirming the prisoner's

departure from the site.

(4) The cost of implementing this section shall be paid out of the general fund of the state.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1980, Act 22, Imd. Eff. Mar. 7, 1980;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1994, Act 217, Eff. Dec. 15, 1998.

Compiler's note: Section 2 of 1994 PA 217, which provides that "This amendatory act shall take effect on the date that sentencing guidelines are enacted into law after the sentencing commission submits its report to the secretary of the senate and the clerk of the house of representatives pursuant to sections 31 to 34 of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, as added by the amendatory act resulting from House Bill No. 4782 of the 87th Legislature." was repealed by 1998 PA 316, effective Dec. 15, 1998.

Popular name: Department of Corrections Act

791.238 Custody of paroled prisoner; warrant for return of paroled prisoner; incarceration pending hearing; treatment as escaped prisoner; time during parole violation not counted as time served; forfeiture of good time; committing crime while on parole; construction of parole.

Sec. 38. (1) Each prisoner on parole shall remain in the legal custody and under the control of the department. The deputy director of the bureau of field services, upon a showing of probable violation of parole, may issue a warrant for the return of any paroled prisoner. Pending a hearing upon any charge of parole violation, the prisoner shall remain incarcerated.

(2) A prisoner violating the provisions of his or her parole and for whose return a warrant has been issued by the deputy director of the bureau of field services is treated as an escaped prisoner and is liable, when arrested, to serve out the unexpired portion of his or her maximum imprisonment. The time from the date of the declared violation to the date of the prisoner's availability for return to an institution shall not be counted as time served. The warrant of the deputy director of the bureau of field services is a sufficient warrant authorizing all officers named in the warrant to detain the paroled prisoner in any jail of the state until his or her return to the state penal institution.

(3) If a paroled prisoner fails to return to prison when required by the deputy director of the bureau of field services or if the paroled prisoner escapes while on parole, the paroled prisoner shall be treated in all respects as if he or she had escaped from prison and is subject to be retaken as provided by the laws of this state.

(4) The parole board, in its discretion, may cause the forfeiture of all good time to the date of the declared violation.

(5) A prisoner committing a crime while at large on parole and being convicted and sentenced for the crime shall be treated as to the last incurred term as provided under section 34.

(6) A parole shall be construed as a permit to the prisoner to leave the prison, and not as a release. While at large, the paroled prisoner shall be considered to be serving out the sentence imposed by the court and, if he or she is eligible for good time, shall be entitled to good time the same as if confined in a state correctional facility.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1968, Act 192, Eff. Nov. 15, 1968;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1994, Act 217, Eff. Dec. 15, 1998.

Compiler's note: Section 2 of 1994 PA 217, which provides that "This amendatory act shall take effect on the date that sentencing guidelines are enacted into law after the sentencing commission submits its report to the secretary of the senate and the clerk of the house of representatives pursuant to sections 31 to 34 of chapter IX of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, as added by the amendatory act resulting from House Bill No. 4782 of the 87th Legislature." was repealed by 1998 PA 316, effective Dec. 15, 1998.

Popular name: Department of Corrections Act

791.239 Paroled prisoner; arrest without warrant.

Sec. 39. A probation officer, a parole officer, a peace officer of this state, or an employee of the department other than a probation or parole officer who is authorized by the director to arrest parole violators may arrest without a warrant and detain in any jail of this state a paroled prisoner, if the probation officer, parole officer, peace officer, or authorized departmental employee has reasonable grounds to believe that the prisoner has violated parole or a warrant has been issued for his or her return under section 38.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1968, Act 192, Eff. Nov. 15, 1968;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1988, Act 293, Imd. Eff. Aug. 4, 1988.

Popular name: Department of Corrections Act

791.239a Arrest for alleged parole violation; right to preliminary hearing; notice of hearing; rights at hearing; postponement; notice of charges, summary of evidence, and determination of guilt when preliminary hearing not held.

Sec. 39a. (1) Within 10 days after an arrest for an alleged violation of parole, the parolee shall be entitled to a preliminary hearing to determine whether there is probable cause to believe that the conditions of parole have been violated or a fact-finding hearing held pursuant to section 40a.

(2) Prior to the preliminary hearing, the accused parolee shall be given written notice of the charges, time, place, and purpose of the preliminary hearing.

(3) At the preliminary hearing, the accused parolee is entitled to the following rights:

(a) Disclosure of the evidence against him or her.

(b) The right to testify and present relevant witnesses and documentary evidence.

(c) The right to confront and cross-examine adverse witnesses unless the person conducting the preliminary hearing finds on the record that a witness may be subjected to risk of harm if his or her identity is revealed.

(4) A preliminary hearing may be postponed beyond the 10-day time limit on the written request of the parolee, but shall not be postponed by the department.

(5) If a preliminary hearing is not held pursuant to subsection (1), an accused parolee shall be given written notice of the charges against him or her, the time, place and purpose of the fact-finding hearing and a written summary of the evidence to be presented against him or her.

(6) If a preliminary hearing is not held pursuant to subsection (1), an accused parolee may not be found guilty of a violation based on evidence that was not summarized in the notice provided pursuant to subsection (5) except for good cause stated on the record and included in the written findings of fact provided to the parolee.

History: Add. 1982, Act 314, Imd. Eff. Oct. 15, 1982.

Popular name: Department of Corrections Act

791.240 Prisoner convicted of violent felony; placement on parole; special provisions; history of substance abuse; report on parole violators; definitions.

Sec. 40. (1) If a prisoner serving a sentence for conviction of a violent felony is placed on parole, both of the following special provisions apply:

(a) The supervising parole agent shall make a home call within the first 45 days after the prisoner is placed on parole.

(b) The supervising parole agent shall do a LEIN check not less than quarterly for that parolee and not later than 1 month before a parolee is discharged from parole.

(2) If a prisoner who has a history of substance abuse is placed on parole and is assigned to intensive, maximum, or medium parole supervision, the department shall require as a condition of parole that the parolee submit to substance abuse testing at least twice each month.

(3) Not later than April 1 of each year, the department shall report to the legislature on the number of parolees who are returned to state correctional facilities for a violation of parole involving the use of alcohol or a controlled substance during the preceding calendar year. The report shall specify the number of parolees who are returned to a state correctional facility after 1 such violation, 2 such violations, 3 such violations, 4 such violations, and 5 or more such violations.

(4) The department shall report to the legislature on a quarterly basis both of the following:

(a) The number of parolees who are absconders.

(b) The number of parolees who have been absconders for more than 3 months.

(5) As used in this section:

(a) "LEIN" means the law enforcement information network regulated under the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(b) "Substance abuse" means the taking of alcohol or other drugs at dosages that place an individual's social, economic, psychological, and physical welfare in potential hazard or to the extent that an individual loses the power of self-control as a result of the use of alcohol or drugs, or while habitually under the influence of alcohol or drugs, endangers public health, morals, safety, or welfare, or a combination thereof.

(c) "Violent felony" means that term as defined in section 36.

History: Add. 2006, Act 487, Eff. Jan. 1, 2007.

Compiler's note: Former MCL 791.240, which pertained to violation of parole, was repealed by Act 192 of 1968, Eff. Nov. 15, 1968.

Popular name: Department of Corrections Act

791.240a Parole; revocation; violation; right to fact-finding hearing; time and location of hearing; parolee determined to be indigent; appointment of attorney; notice; rights at hearing; postponement; notice to director if hearing not conducted within certain time

period; insufficient evidence; reinstatement to parole status; finding of parole violation; revocation of parole; noncompliance with order to make restitution; "violent felony" defined.

Sec. 40a. (1) After a prisoner is released on parole, the prisoner's parole order is subject to revocation at the discretion of the parole board for cause as provided in this section.

(2) If a paroled prisoner who is required to register pursuant to the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, willfully violates that act, the parole board shall revoke the parole. If a prisoner convicted of violating or conspiring to violate section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is released on parole and violates or conspires to violate article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, and that violation or conspiracy to violate is punishable by imprisonment for 4 or more years, or commits a violent felony during his or her release on parole, parole shall be revoked.

(3) Within 45 days after a paroled prisoner has been returned or is available for return to a state correctional facility under accusation of a parole violation other than conviction for a felony or misdemeanor punishable by imprisonment under the laws of this state, the United States, or any other state or territory of the United States, the prisoner is entitled to a fact-finding hearing on the charges before 1 member of the parole board or an attorney hearings officer designated by the chairperson of the parole board. The fact-finding hearing shall be conducted only after the accused parolee has had a reasonable amount of time to prepare a defense. The fact-finding hearing may be held at a state correctional facility or at or near the location of the alleged violation.

(4) If, before a fact-finding hearing begins, the accused parolee alleges that he or she is indigent and requests that an attorney be appointed to represent him or her, the parole board member or attorney hearings officer who will conduct the hearing shall determine whether the accused parolee is indigent. If the accused parolee is determined to be indigent, the parole board member or hearings officer shall cause the appointment of an attorney to represent the accused parolee at the fact-finding hearing. The cost of the appointed attorney shall be paid from the department's general operating budget.

(5) An accused parolee shall be given written notice of the charges against him or her and the time, place, and purpose of the fact-finding hearing. At the fact-finding hearing, the accused parolee may be represented by a retained attorney or an attorney appointed under subsection (4) and is entitled to the following rights:

- (a) Full disclosure of the evidence against him or her.
- (b) To testify and present relevant witnesses and documentary evidence.
- (c) To confront and cross-examine adverse witnesses unless the person conducting the fact-finding hearing finds on the record that a witness is subject to risk of harm if his or her identity is revealed.
- (d) To present other relevant evidence in mitigation of the charges.

(6) A fact-finding hearing may be postponed for cause beyond the 45-day time limit on the written request of the parolee, the parolee's attorney, or, if a postponement of the preliminary parole violation hearing required under section 39a has been granted beyond the 10-day time limit, by the parole board.

(7) The director or a deputy director designated by the director shall be notified in writing if the preliminary parole violation hearing is not conducted within the 10-day time limit, and the hearing shall be conducted as soon as possible. The director or a deputy director designated by the director shall be notified in writing if the fact-finding hearing is not conducted within the 45-day time limit, and the hearing shall be conducted as soon as possible. A parolee held in custody shall not be released pending disposition of either hearing.

(8) If the evidence presented is insufficient to support the allegation that a parole violation occurred, the parolee shall be reinstated to parole status.

(9) If the parole board member or hearings officer conducting the fact-finding hearing determines from a preponderance of the evidence that a parole violation has occurred, the parole board member or hearings officer shall present the relevant facts to the parole board and make a recommendation as to the disposition of the charges.

(10) If a preponderance of the evidence supports the allegation that a parole violation occurred, the parole board may revoke parole, and the parolee shall be provided with a written statement of the findings of fact and the reasons for the determination within 60 days after the paroled prisoner has been returned or is available for return to a state correctional facility.

(11) A parolee who is ordered to make restitution under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, or to pay an assessment ordered under section 5 of 1989 PA 196, MCL 780.905, as a condition of parole may have his or her parole revoked by the parole board if the parolee fails to comply with

the order and if the parolee has not made a good faith effort to comply with the order. In determining whether to revoke parole, the parole board shall consider the parolee's employment status, earning ability, and financial resources, the willfulness of the parolee's failure to comply with the order, and any other special circumstances that may have a bearing on the parolee's ability to comply with the order.

(12) As used in this section, "violent felony" means that term as defined in section 36.

History: Add. 1968, Act 192, Eff. Nov. 15, 1968;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1985, Act 85, Eff. July 10, 1985;—Am. 1993, Act 346, Eff. May 1, 1994;—Am. 2006, Act 315, Imd. Eff. July 20, 2006;—Am. 2006, Act 316, Imd. Eff. July 20, 2006;—Am. 2006, Act 532, Imd. Eff. Dec. 29, 2006.

Popular name: Department of Corrections Act

791.241 Order rescinding or reinstating parole.

Sec. 41. When the parole board has determined the matter it shall enter an order rescinding such parole, or reinstating the original order of parole or enter such other order as it may see fit.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.242 Final order of discharge; certificate; period of parole.

Sec. 42. (1) If a paroled prisoner has faithfully performed all of the conditions and obligations of parole for the period of time fixed in the order of parole, and has obeyed all of the rules and regulations adopted by the parole board, the prisoner has served the full sentence required. The parole board shall enter a final order of discharge and issue the paroled prisoner a certificate of discharge.

(2) Parole shall not be granted for a period less than 2 years in a case of murder, actual forcible rape, robbery armed, kidnapping, extortion, or breaking and entering an occupied dwelling in the nighttime unless the maximum time remaining to be served on the sentence is less than 2 years.

(3) Parole shall only be granted for life for a prisoner sentenced under section 520b(2)(b) of the Michigan penal code, 1931 PA 328, MCL 750.520b.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1961, Act 92, Eff. Sept. 8, 1961;—Am. 2006, Act 170, Eff. Aug. 28, 2006.

Popular name: Department of Corrections Act

791.243 Applications for pardon; filing, information.

Sec. 43. All applications for pardons, reprieves and commutations shall be filed with the parole board upon forms provided therefor by the parole board, and shall contain such information, records and documents as the parole board may by rule require.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.244 Parole board interview of prisoner serving sentence for first degree murder or sentence of imprisonment for life without parole; board duties upon own initiation or receipt of application for reprieve, commutation, or pardon; files as public record.

Sec. 44. (1) Subject to the constitutional authority of the governor to grant reprieves, commutations, and pardons, 1 member of the parole board shall interview a prisoner serving a sentence for murder in the first degree or a sentence of imprisonment for life without parole at the conclusion of 10 calendar years and thereafter as determined appropriate by the parole board, until such time as the prisoner is granted a reprieve, commutation, or pardon by the governor, or is deceased. The interview schedule prescribed in this subsection applies to all prisoners to whom this section is applicable, regardless of when they were sentenced.

(2) Upon its own initiation of, or upon receipt of any application for, a reprieve, commutation, or pardon, the parole board shall do all of the following, as applicable:

(a) Not more than 60 days after receipt of an application, conduct a review to determine whether the application for a reprieve, commutation, or pardon has merit.

(b) Deliver either the written documentation of the initiation or the original application with the parole board's determination regarding merit, to the governor and retain a copy of each in its file, pending an investigation and hearing.

(c) Within 10 days after initiation, or after determining that an application has merit, forward to the sentencing judge and to the prosecuting attorney of the county having original jurisdiction of the case, or their successors in office, a written notice of the filing of the application or initiation, together with copies of the application or initiation, any supporting affidavits, and a brief summary of the case. Within 30 days after receipt of notice of the filing of any application or initiation, the sentencing judge and the prosecuting attorney, or their successors in office, may file information at their disposal, together with any objections, in

writing, which they may desire to interpose. If the sentencing judge and the prosecuting attorney, or their successors in office, do not respond within 30 days, the parole board shall proceed on the application or initiation.

(d) If an application or initiation for commutation is based on physical or mental incapacity, direct the bureau of health care services to evaluate the condition of the prisoner and report on that condition. If the bureau of health care services determines that the prisoner is physically or mentally incapacitated, the bureau shall appoint a specialist in the appropriate field of medicine, who is not employed by the department, to evaluate the condition of the prisoner and to report on that condition. These reports are protected by the doctor-patient privilege of confidentiality, except that these reports shall be provided to the governor for his or her review.

(e) Within 270 days after initiation by the parole board or receipt of an application that the parole board has determined to have merit pursuant to subdivision (a), make a full investigation and determination on whether or not to proceed to a public hearing.

(f) Conduct a public hearing not later than 90 days after making a decision to proceed with consideration of a recommendation for the granting of a reprieve, commutation, or pardon. The public hearing shall be held before a formal recommendation is transmitted to the governor. One member of the parole board who will be involved in the formal recommendation may conduct the hearing, and the public shall be represented by the attorney general or a member of the attorney general's staff.

(g) At least 30 days before conducting the public hearing, provide written notice of the public hearing by mail to the attorney general, the sentencing trial judge, and the prosecuting attorney, or their successors in office, and each victim who requests notice pursuant to the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

(h) Conduct the public hearing pursuant to the rules promulgated by the department. Except as otherwise provided in this subdivision, any person having information in connection with the pardon, commutation, or reprieve shall be sworn as a witness. A person who is a victim shall be given an opportunity to address and be questioned by the parole board at the hearing or to submit written testimony for the hearing. In hearing testimony, the parole board shall give liberal construction to any technical rules of evidence.

(i) Transmit its formal recommendation to the governor.

(j) Make all data in its files available to the governor if the parole board recommends the granting of a reprieve, commutation, or pardon.

(3) Except for medical records protected by the doctor-patient privilege of confidentiality, the files of the parole board in cases under this section shall be matters of public record.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1992, Act 181, Imd. Eff. Sept. 22, 1992;—Am. 1999, Act 191, Eff. Mar. 10, 2000.

Popular name: Department of Corrections Act

Administrative rules: R 791.1101 et seq. of the Michigan Administrative Code.

791.245 Hearing; administering oath to witness.

Sec. 45. In the conduct of any hearing or investigation as herein provided any member of the parole board may administer the oath to any witness.

History: 1953, Act 232, Eff. Oct. 2, 1953.

Popular name: Department of Corrections Act

791.246 Decisions and recommendations of parole board; majority vote required.

Sec. 46. All decisions and recommendations of the parole board required by this act shall be by a majority vote of the parole board or a parole board panel created pursuant to section 6(2).

History: Add. 1982, Act 314, Imd. Eff. Oct. 15, 1982.

Popular name: Department of Corrections Act